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**TITLE 105 INDIANA DEPARTMENT OF
TRANSPORTATION**

LSA Document #00-248(F)

DIGEST

Amends 105 IAC 12 concerning procurement of supplies and services. Effective 30 days after filing with the secretary of state.

105 IAC 12-1-6	105 IAC 12-2-7
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SECTION 1. 105 IAC 12-1-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-6 “Change order” defined

Authority: IC 5-22-4-2; IC 8-23-2-6
Affected: IC 5-22

Sec. 6. “Change order” means a written order that:

- (1) is signed by the ~~commissioner~~; **purchasing agent**; and
- (2) directs the contractor to make changes **that the contract authorizes the purchasing agent to order** without the consent of the contractor.

(Indiana Department of Transportation; 105 IAC 12-1-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)

SECTION 2. 105 IAC 12-1-9 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-9 “Contract modification” defined

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 9. “Contract modification” means a written alteration:

- (1) in ~~specifications~~; **a specification**, delivery point, rate of delivery, period of performance, price, quantity, or ~~other~~ **another** provision of a contract; ~~which alteration is~~ **and**

(2) accomplished by mutual ~~approval~~ **action** of the parties to the contract. *(Indiana Department of Transportation; 105 IAC 12-1-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)*

SECTION 3. 105 IAC 12-1-10 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-10 “Contractor” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 10. “Contractor” ~~means any~~ **refers to** a person ~~having~~ **who has** a contract with the department. *(Indiana Department of Transportation; 105 IAC 12-1-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)*

SECTION 4. 105 IAC 12-1-12 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-12 “Designee” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 12. “Designee” means ~~a duly~~ **an** authorized representative of the commissioner. *(Indiana Department of Transportation; 105 IAC 12-1-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)*

SECTION 5. 105 IAC 12-1-13 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-13 “Established catalog price” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 13. “Established catalog price” ~~means~~ **refers to** the price included in a catalog, price list, schedule, or other form that:

- (1) is regularly maintained by the manufacturer or contractor;
- (2) is either published or otherwise available for inspection by customers; and
- (3) states prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public, for the supplies or services involved.

(Indiana Department of Transportation; 105 IAC 12-1-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)

SECTION 6. 105 IAC 12-1-14 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-14 “Invitation for bid” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 14. “Invitation ~~to~~ **for bid**” means all documents, whether attached or incorporated by reference, used for ~~the purpose of~~ soliciting bids. ~~The term, invitation to bid, includes a request for proposals.~~ *(Indiana Department of Transportation; 105 IAC 12-1-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366)*

SECTION 7. 105 IAC 12-1-16 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-16 “Person” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 16. “Person” ~~means any~~ **includes an association, a business, individual, a committee, a corporation, partnership, a fiduciary, an individual, a joint stock company, a joint venture, or other a limited liability company, a**

partnership, a sole proprietorship, a trust, or another legal entity, organization, or group of individuals. (*Indiana Department of Transportation; 105 IAC 12-1-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 8. 105 IAC 12-1-20 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-20 “Purchase description” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 20. (a) “Purchase description” means the words used in an invitation ~~to~~ **for** bid to describe the supplies or ~~service~~ **services** to be purchased. ~~and~~

(b) **The term** includes specifications attached to, or made a part of, the invitation ~~to~~ **for** bid. (*Indiana Department of Transportation; 105 IAC 12-1-20; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 9. 105 IAC 12-1-20.1 IS ADDED TO READ AS FOLLOWS:

105 IAC 12-1-20.1 “Purchasing agent” defined

Authority: IC 5-22-4-2; IC 8-23-2-6

Affected: IC 5-22

Sec. 20.1. “Purchasing agent” means an individual authorized by the department to act as an agent for the department in the administration of the duties of the department. (*Indiana Department of Transportation; 105 IAC 12-1-20.1; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 10. 105 IAC 12-1-21 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-21 “Request for proposals” or “RFP” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 21. “Request for proposals” or **“RFP”** means all documents, whether attached or incorporated by reference, used for soliciting proposals. (*Indiana Department of Transportation; 105 IAC 12-1-21; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 11. 105 IAC 12-1-23 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-23 “Responsive bidder” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 23. “Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the invitation ~~to~~ **for** bid. (*Indiana Department of Transportation; 105 IAC 12-1-23; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 12. 105 IAC 12-1-24 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-24 “Services” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 24. “Services” means the furnishing of labor, time, or effort by a ~~contractor~~ **person not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.** (*Indiana Department of Transportation; 105 IAC 12-1-24; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 13. 105 IAC 12-1-25 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-25 “Specifications” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 25. (a) “Specifications” means ~~any~~ a description of the physical or functional characteristics of a supply or service or the nature of a supply or service. ~~and may include~~

(b) ~~The term includes~~ a description of any requirements for inspecting, testing, or preparing a supply ~~or service or construction item~~ for delivery. (*Indiana Department of Transportation; 105 IAC 12-1-25; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 14. 105 IAC 12-1-26 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-26 “Supplies” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 26. “Supplies” means ~~all personal~~ any property, including ~~but not limited to,~~ equipment, **goods, and** materials. ~~and goods. The term does not include an interest in real property.~~ (*Indiana Department of Transportation; 105 IAC 12-1-26; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367*)

SECTION 15. 105 IAC 12-2-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-4 Minority participation

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 4. The department will make good faith efforts to solicit participation of minorities on every invitation ~~to for~~ bid. (*Indiana Department of Transportation; 105 IAC 12-2-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 16. 105 IAC 12-2-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-6 Bid guarantees

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 6. At the discretion of the department, a bidder may be required to submit with its bid a bid guarantee in the form of a certified check, a cashier’s check, or a bid bond acquired from a surety company authorized to do business ~~in the state of~~ Indiana. If required, the amount shall be specified in the invitation ~~to for~~ bid. The bid guarantee of an unsuccessful bidder will be returned upon award of the contract. The bid guarantee of the successful bidder will be returned after the bidder enters into a contract with the department. (*Indiana Department of Transportation; 105 IAC 12-2-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 17. 105 IAC 12-2-7 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-7 Performance bonds

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 7. At the discretion of the department, a successful bidder may be required to submit a performance bond in the form of a certified check, a cashier’s check, or ~~a~~ performance bond acquired from a surety company authorized to do business ~~in the state of~~ Indiana. If required, the amount of the performance bond and the time that it must be submitted will be specified in the invitation ~~to for~~ bid. Performance bonds will be returned, upon request, at the successful

completion of the contract. (*Indiana Department of Transportation; 105 IAC 12-2-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 18. 105 IAC 12-2-9 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-9 Public notice

Authority: IC 8-23-2-6

Affected: IC 5-3-1; IC 5-22

Sec. 9. (a) The department shall give public notice according to the following schedule: **in the manner required by IC 5-3-1.**

(1) If the procurement is estimated to exceed fifty thousand dollars (\$50,000), notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.

(2) If the procurement is estimated to exceed twenty-five thousand dollars (\$25,000), but not to exceed fifty thousand dollars (\$50,000), notice shall be published at least one (1) time; at least seven (7) days before the date the bids will be received.

(3) If the procurement is estimated to be less than twenty-five thousand dollars (\$25,000), publication of notice is not required.

(4) The department may publish additional notices at its discretion.

(b) Whenever notice is required by subsection (a), it shall be published in one (1) newspaper of general circulation in Marion County, Indiana. If any of the services or supplies being procured are for use outside Marion County, Indiana, notice also may be published in one (1) or more newspapers of general circulation in that area.

(c) If the procurement is estimated to exceed twenty-five thousand dollars (\$25,000), the department shall post notices on a public bulletin board located in the department's central office in Indianapolis, Indiana. (*Indiana Department of Transportation; 105 IAC 12-2-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 19. 105 IAC 12-2-14 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-14 Withdrawal of bids or proposals

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 14. A bidder bearing proper authorization and identification may sign for and receive an unopened bid **or proposal** and withdraw the bid **or proposal** prior to the exact time for submission of bids **or proposals**. A bidder may modify its bid **or proposal** by withdrawing its bid **or proposal** as provided above and resubmitting a modified bid **or proposal** prior to the exact time for submission of bids **or proposals**. Neither the staff nor the facilities of the department will be available to assist a bidder desiring to make modifications. It is the bidder's responsibility to make all modifications. (*Indiana Department of Transportation; 105 IAC 12-2-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368*)

SECTION 20. 105 IAC 12-2-16 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-16 Award; cancellation; rejection

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 16. (a) The department reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one (1) bidder. A bidder bidding on an all or none basis must state so in its bid.

(b) Prior to the opening of bids, the department may cancel an invitation **to for** bid in whole or in part, when it is in the best interest of the department. Reasons for cancellation include, but are not limited to:

(1) the department no longer requires the supplies or services;

- (2) the department no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the invitation ~~to for~~ bid would be of such magnitude that a new invitation ~~to for~~ bid is desirable.

(c) After the opening of bids, but prior to award of a contract, the department may reject all bids, in whole or in part, when it is in the best interest of the department. Reasons for rejection include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) ambiguous or otherwise inadequate specifications were part of the invitation ~~to for~~ bid;
- (3) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (4) all bids received contain unreasonable prices; or
- (5) there is reason to believe that the bids or proposals may not have been independently prepared.

(d) When the department cancels an invitation ~~to for~~ bid, the department will send notice to each person who submitted a bid, stating the reason for the cancellation. **The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.**

(e) When two (2) or more bids are equal, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses. (*Indiana Department of Transportation; 105 IAC 12-2-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369*)

SECTION 21. 105 IAC 12-3-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-1 Purchases less than \$2,500

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 1. (a) A procurement with an estimated cost not exceeding **two thousand** five hundred dollars (~~\$500~~) (**\$2,500**) may be made under the procedure outlined in this section.

(b) Bids shall be invited from at least one (1) person known to deal in the supplies or services to be procured.

(c) The purchase description and date bids are due shall be communicated to the person invited to bid. Means of communication may include mail, telephone, **electronic mail**, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If a satisfactory bid is received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 268; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369*)

SECTION 22. 105 IAC 12-3-2 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-2 Purchases less than \$75,000

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 2. (a) A procurement with an estimated cost not exceeding **five seventy-five** thousand dollars (~~\$5,000~~) (**\$75,000**) may be made under the procedure outlined in this section.

(b) ~~Where practicable,~~ Bids shall be invited from at least three (3) persons known to deal in the supplies or services to be procured.

(c) The purchase description and the date bids are due shall be communicated to the persons invited to bid. Means of communication may include mail, telephone, **electronic mail**, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper, advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If satisfactory bids are received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369*)

SECTION 23. 105 IAC 12-3-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-4 Competitive sealed bids

Authority: IC 8-23-2-6

Affected: IC 5-22-18-2

Sec. 4. (a) A contract for supplies or services may be awarded under the procedure outlined in this section regardless of **the** estimated dollar value.

(b) An invitation ~~to~~ **for** bid under this section shall be issued to potential bidders and must include the following:

(1) A purchase description.

(2) All contractual terms and conditions ~~applicable~~ **that apply** to the ~~procurement~~ **purchase**.

(3) A statement of the evaluation criteria ~~to that will~~ be used, including ~~criteria such as any of the following:~~

(A) Inspection.

(B) Testing.

(C) Quality.

(D) Workmanship.

(E) Delivery. ~~and~~

(F) Suitability for a particular purpose.

(4) The time, date, and place ~~for the submission of bids and for the opening of bids.~~

(5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.

(6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

(c) Bids shall be publicly opened at the time and place designated in the invitation ~~to~~ **for** bid in the presence of one (1) or more witnesses.

(d) A contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder. (*Indiana Department of Transportation; 105 IAC 12-3-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370*)

SECTION 24. 105 IAC 12-3-5 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-5 Competitive sealed proposal or request for proposal

Authority: IC 5-22-4-2; IC 8-23-2-6

Affected: IC 5-3-1; IC 5-22

Sec. 5. (a) ~~The commissioner must make~~ **When a purchasing agent makes** a written determination ~~approving that~~

the procurement use of supplies and services under this section: **competitive sealed bidding is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using the procedure provided by this section instead of competitive sealed bidding.**

(b) ~~Proposals~~ **The purchasing agent shall be solicited solicit proposals** through a request for proposals, which must include the ~~criteria to be used in evaluating the proposals.~~ **following:**

(1) A statement concerning the relative importance of price and the other evaluation factors.

(2) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(c) Public notice shall be given in the manner required by IC 5-3-1.

~~(c)~~ **(d)** Proposals shall be opened at the date and time specified in the request for proposals.

~~(d)~~ **(e)** The department may conduct discussions with persons submitting proposals for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Persons submitting proposals must be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals. In conducting discussions, the department shall not disclose information derived from proposals submitted by competing persons.

~~(e)~~ **(f)** After identification of the responsible offer or whose proposal appears to be the most advantageous to the department, the department will enter into contract preparation activities with the bidder. If at any time the contract preparation activities are judged to be ineffective, the department may cease all activities with that bidder and begin contract preparation activities with the next highest ranked bidder, and the process may continue until a contract is executed. The department reserves the right to cease all contract preparation activities at any time and ~~the to~~ reject all proposals, if such action is determined to be in the best interest of the department. *(Indiana Department of Transportation; 105 IAC 12-3-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370)*

SECTION 25. 105 IAC 12-3-7 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-7 Open-end contracts

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 7. (a) Procurement of various types of aggregates and bituminous materials may be awarded under the procedure outlined in this section.

(b) The department will solicit unit prices for the various types of aggregates and bituminous materials in the invitation ~~to for~~ bid. Prices submitted in bids shall be binding upon the bidder for the time period specified in the invitation ~~to for~~ bid.

(c) A procurement of a specified quantity of material will be awarded to the bidder whose relative cost per unit is the lowest, using the following formula:

$$C = P + (2 \times D \times M)$$

Where:

P	=	Price quoted per unit.
D	=	Haul distance from supplier to the department worksite.
M	=	Cost per mile as determined by the department.
C	=	Relative cost per unit.

(d) The department may continue to procure materials from the bids submitted for the period specified in the invitation ~~to for~~ bid. *(Indiana Department of Transportation; 105 IAC 12-3-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370)*

SECTION 26. 105 IAC 12-3-8 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-8 Special procurements

Authority: IC 5-22-4-2; IC 8-23-2-6

Affected: IC 5-22

Sec. 8. (a) ~~The department may make a special procurement~~ **Notwithstanding any other provision of this article, a purchasing agent may make a purchase without soliciting bids or proposals** under any of the following circumstances:

- (1) When there exists a unique opportunity to obtain supplies or services at a substantial savings to the department.
- (2) When the market structure requires the department to inspect and bid on the supplies to be procured.
- (3) **When only one (1) source meets the department's reasonable requirements** for the procurement of data processing contracts or license agreements ~~for involving:~~
 - (A) software programs; or
 - (B) supplies or services. ~~when only one (1) source meets the department's reasonable requirements.~~
- (4) When the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the department's reasonable requirements.
- (5) When there exists, under emergency conditions, a threat to public health, welfare, or safety.
- (6) When the department has solicited for a procurement ~~under another section of this chapter~~ and has not received a responsive bid from a responsible bidder.
- (7) When procurement of the required supplies or services ~~under another section of this chapter~~ would seriously impair the functioning of the department.
- (8) For the evaluation of supplies or a system containing supplies to obtain functional information or comparative data or for any other purpose that in the judgment of the commissioner may advance the long term competitive position of the state.
- (9) For the procurement of copyrighted materials to be used, provided, or distributed by the department.**

(b) A special procurement must be made with such competition as is practicable under the circumstances.

(c) **A purchasing agent shall maintain the contract records for a special purchase in a separate file. The contract file shall include** a written determination of ~~the a~~ basis for the special ~~procurement purchase~~ and for the selection of the particular ~~contractor must be included in the contract file.~~

(d) A special procurement must be approved by the commissioner. (*Indiana Department of Transportation; 105 IAC 12-3-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 27. 105 IAC 12-4-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-1 Price adjustments

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 1. The department may enter into a contract ~~which provide that provides~~ for price adjustments under the conditions defined in the invitation ~~to for~~ bid. (*Indiana Department of Transportation; 105 IAC 12-4-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 28. 105 IAC 12-4-3 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-3 Equipment rental or lease with option to purchase

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 3. A contract for rental or lease may contain an option to purchase under the following circumstances:

- (1) Exercise of the option shall be at the sole discretion of the commissioner.
- (2) The option must be part of the invitation ~~to for~~ bid.

(*Indiana Department of Transportation; 105 IAC 12-4-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001,*

9:35 a.m.: 25 IR 371)

SECTION 29. 105 IAC 12-4-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-4 Additions

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 4. (a) If a bidder inserts contract terms or bids on items not listed in the invitation ~~to for~~ bid, the department will treat the additional material as a proposal for addition to the contract and may:

- (1) find the bidder to be nonresponsive;
- (2) permit the bidder to withdraw the proposed additions to the contract; or
- (3) accept any of the proposed additions to the contract.

(b) The department will not accept proposed additions to the contract that are prejudicial to the interest of the department or fair competition. The department's decision to permit a change will be made in writing. (*Indiana Department of Transportation; 105 IAC 12-4-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371*)

SECTION 30. 105 IAC 12-4-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-6 Option to renew

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 6. A contract may contain an option to renew or extension of its terms, for a specified period of time, under the following circumstances:

- (1) Exercise of the option is at the discretion of the department.
- (2) The provision must be included in the ~~invitation to bid:~~ **solicitation.**
- (3) A contract for supplies ~~or services~~ may be entered into for a period not to exceed four (4) years.
- (4) Performance obligations for succeeding fiscal years shall be subject to availability of funds for each year.
- (5) The invitation ~~to for~~ bid and contract specify the exact payment terms.

(*Indiana Department of Transportation; 105 IAC 12-4-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1510; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 372*)

SECTION 31. 105 IAC 12-3-3 IS REPEALED.

LSA Document #00-248(F)

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